subpart H of this part. Any such interference shall be a violation of the labor condition application and this subpart I and subpart H of this part, and the Administrator may take such further actions as the Administrator considers appropriate. (Federal criminal statutes prohibit certain interference with a Federal officer in the performance of official duties. 18 U.S.C. 111 and 18 U.S.C. 1114.)

(d) *Confidentiality*. The Administrator shall, to the extent possible under existing law, protect the confidentiality of any person who provides information to the Department in confidence in the course of an investigation or otherwise under this subpart I or subpart H of this part.

[65 FR 80233, Dec. 20, 2000, as amended at 69 FR 68228, Nov. 23, 2004]

§ 655.801 What protection do employees have from retaliation?

(a) No employer subject to this subpart I or subpart H of this part shall intimidate, threaten, restrain, coerce, blacklist, discharge or in any other manner discriminate against an employee (which term includes a former employee or an applicant for employment) because the employee has—

(1) Disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of sections 212(n) or (t) of the INA or any regulation relating to sections 212(n) or (t), including this subpart I and subpart H of this part and any pertinent regulations of INS or the Department of Justice; or

(2) Cooperated or sought to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements of sections 212(n) or (t) of the INA or any regulation relating to sections 212(n) or (t).

(b) It shall be a violation of this section for any employer to engage in the conduct described in paragraph (a) of this section. Such conduct shall be subject to the penalties prescribed by sections 212(n)(2)(C)(ii) or (t)(3)(C)(ii) of the INA and § 655.810(b)(2), *i.e.*, a fine of up to $5,000, disqualification from filing petitions under section 204 or section 214(c) of the INA for at least two years, and such further administrative remedies as the Administrator considers appropriate.

(c) Pursuant to sections 212(n)(2)(C)(v) and (t)(3)(C)(v) of the INA, an H–1B nonimmigrant who has filed a complaint alleging that an employer has discriminated against the employee in violation of paragraph (a)(1) of this section may be allowed to seek other appropriate employment in the United States, provided the employee is otherwise eligible to remain and work in the United States. Such employment may not exceed the maximum period of stay authorized for a nonimmigrant classified under sections 212(n) or (t) of the INA, as applicable. Further information concerning this provision should be sought from the Immigration and Naturalization Service.

[65 FR 80233, Dec. 20, 2000, as amended at 69 FR 68229, Nov. 23, 2004]

§ 655.805 What violations may the Administrator investigate?

(a) The Administrator, through investigation, shall determine whether an H–1B employer has—

(1) Filed a labor condition application with ETA which misrepresents a material fact (Note to paragraph (a)(1): Federal criminal statutes provide penalties of up to $10,000 and/or imprisonment of up to five years for knowing and willful submission of false statements to the Federal Government. 18 U.S.C. 1001; see also 18 U.S.C. 1546);

(2) Failed to pay wages (including benefits provided as compensation for services), as required under § 655.731 (including payment of wages for certain nonproductive time);

(3) Failed to provide working conditions as required under § 655.732;

(4) Filed a labor condition application for H–1B nonimmigrants during a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment, as prohibited by § 655.733;

(5) Failed to provide notice of the filing of the labor condition application, as required in § 655.734;

(6) Failed to specify accurately on the labor condition application the number of workers sought, the occupational classification in which the H–1B nonimmigrant(s) will be employed, or

the wage rate and conditions under which the H–1B nonimmigrant(s) will be employed;

(7) Displaced a U.S. worker (including displacement of a U.S. worker employed by a secondary employer at the worksite where an H–1B worker is placed), as prohibited by § 655.738 (if applicable);

(8) Failed to make the required displacement inquiry of another employer at a worksite where H–1B nonimmigrant(s) were placed, as set forth in § 655.738 (if applicable);

(9) Failed to recruit in good faith, as required by § 655.739 (if applicable);

(10) Displaced a U.S. worker in the course of committing a willful violation of any of the conditions in paragraphs (a)(2) through (9) of this section, or willful misrepresentation of a material fact on a labor condition application;

(11) Required or accepted from an H–1B nonimmigrant payment or remittance of the additional $500/$1,000 fee incurred in filing an H–1B petition with the INS, as prohibited by § 655.731(c)(10)(ii);

(12) Required or attempted to require an H–1B nonimmigrant to pay a penalty for ceasing employment prior to an agreed upon date, as prohibited by § 655.731(c)(10)(i);

(13) Discriminated against an employee for protected conduct, as prohibited by § 655.801;

(14) Failed to make available for public examination the application and necessary document(s) at the employer's principal place of business or worksite, as required by § 655.760(a);

(15) Failed to maintain documentation, as required by this part; and

(16) Failed otherwise to comply in any other manner with the provisions of this subpart I or subpart H of this part.

(b) The determination letter setting forth the investigation findings (see § 655.815) shall specify if the violations were found to be substantial or willful. Penalties may be assessed and disqualification ordered for violation of the provisions in paragraphs (a)(5), (6), or (9) of this section only if the violation was found to be substantial or willful. The penalties may be assessed and disqualification ordered for violation of the provisions in paragraphs (a)(2) or (3) of this section only if the violation was found to be willful, but the Secretary may order payment of back wages (including benefits) due for such violation whether or not the violation was willful.

(c) For purposes of this part, ''*willful failure*'' means a knowing failure or a reckless disregard with respect to whether the conduct was contrary to sections 212(n)(1)(A)(i) or (ii), or 212(t)(1)(A)(i) or (ii) of the INA, or §§ 655.731 or 655.732. See *McLaughlin* v. *Richland Shoe Co.*, 486 U.S. 128 (1988); see also *Trans World Airlines* v. *Thurston*, 469 U.S. 111 (1985).

(d) The provisions of this part become applicable upon the date that the employer's LCA is certified pursuant to §§ 655.740 and 655.750, or upon the date employment commences pursuant to section 214(m) of the INA, whichever is earlier. The employer's submission and signature on the LCA (whether Form ETA 9035 or Form ETA 9035E) each constitutes the employer's representation that the statements on the LCA are accurate and its acknowledgment and acceptance of the obligations of the program. The employer's acceptance of these obligations is re-affirmed by the employer's submission of the petition (Form I–129) to the INS, supported by the LCA. See 8 CFR 214.2(h)(4)(iii)(B)(*2*), which specifies that the employer will comply with the terms of the LCA for the duration of the H–1B nonimmigrant's authorized period of stay. If the period of employment specified in the LCA expires or the employer withdraws the application in accordance with § 655.750(b), the provisions of this part will no longer apply with respect to such application, except as provided in § 655.750(b)(3) and (4).

[65 FR 80233, Dec. 20, 2000, as amended at 66 FR 63302, Dec. 5, 2001; 69 FR 68229, Nov. 23, 2004]

§ 655.806 Who may file a complaint and how is it processed?

(a) Any aggrieved party, as defined in § 655.715, may file a complaint alleging a violation described in § 655.805(a). The procedures for filing a complaint by an aggrieved party and its processing by the Administrator are set forth in this